

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

BOGGS MATERIALS, INC., BOGGS
CONTRACTING, INC., and LYNCHES
RIVER CONTRACTING, INC.,

Plaintiffs,

v.

SUMMIT MATERIALS, LLC; AMERICAN
MATERIALS COMPANY, LLC; and
GEORGIA STONE PRODUCTS, LLC,

Defendants.

Civil Action No. 4:22-cv-01151-JD

**MOTION TO WITHDRAW AS
COUNSEL**

NOW COMES the undersigned counsel, pursuant to Local Rule 83.I.07, and respectfully move the Court for an Order allowing Kilpatrick Townsend & Stockton, LLP (“Kilpatrick Townsend”), and attorneys Dustin Greene, Alexander Bullock, Mark Boynton, and Chelsea Simon of the firm to withdraw as counsel for Plaintiffs. In support of this motion, the undersigned state as follows:

1. Prior to the filing of this action, in 2021 Carl Andrew (“Drew”) Boggs, III executed an Acknowledgement, Waiver and Informed Written Consent (“the Conflict Waiver”) expressly waiving a conflict in connection with Kilpatrick Townsend’s representation of another client which was adverse to Mr. Boggs personally in a medical insurance coverage case (which matter is unrelated to any issues in this case). Kilpatrick Townsend undertook the present representation of the Plaintiffs in this case in reliance on Conflict Waiver. While Mr. Boggs and his family founded the plaintiff companies, he is neither an owner nor an officer or director of any of the companies and held no such office or station when the Plaintiffs engaged the firm.

2. Attorney Alexander Bullock entered an appearance for plaintiffs Boggs Materials, Inc., Boggs Contracting, Inc., and Lynches River Contracting, Inc. (“Plaintiffs”) on March 7, 2022, as counsel for Plaintiffs with the filing of the Complaint in this action. [DE # 1]

3. After this case was removed to federal court, Dustin Greene, Chelsea Simon, and Mark Boynton were admitted to this case *pro hac vice* as counsel for Plaintiffs on June 9, 2022, February 24, 2023, and February 28, 2023, respectively. [DE # 14, 28, 29]

4. Mr. Boggs has been actively involved assisting counsel in connection with the representation of Plaintiffs in this case for the past two years.

5. On Thursday, July 13, 2023, Mr. Boggs’ personal attorney in the medical insurance matter informed the undersigned that Mr. Boggs revoked the Conflict Waiver and alleges a conflict of interest now actively exists with respect to Kilpatrick Townsend’s representation of Plaintiffs in this case.

6. Due to the revocation of the Conflict Waiver and the allegation of a present conflict of interest, good cause exists to grant the present motion to withdraw.

7. Pursuant to Local Rule 83.I.07, the mailing addresses and telephone numbers for each of the Plaintiffs is as follows:

Boggs Materials, Inc.
c/o Chuck Steele, President
P.O. Box 689
Monroe, NC 28111-1609
(704) 289-8482

Boggs Contracting, Inc.
c/o JR Hayes, Jr., President
P.O. Box 1609
Monroe, NC 28111-1609
(704) 289-8482

Lynches River Contracting, Inc.
c/o Thad Preslar, President

PO Box 250
Pageland, SC 29728-2016
(843) 675-4285

8. As certified in the attached Declaration of Dustin T. Greene, undersigned informed Plaintiffs via letter and e-mail that (a) they may not proceed without counsel, (b) their counsel must be admitted in this district, and (c) they may be held in default or have their claims dismissed if they fail to obtain replacement counsel within a reasonable time.

9. The undersigned has asked whether Plaintiffs will consent to this motion but has received no response, neither consent nor any objection, to counsel's request to withdraw.

10. The undersigned certifies that prior to filing this motion, Plaintiffs were provided a copy of the same and the undersigned explained that Plaintiffs have the right to object to this motion to withdraw, informed Plaintiffs of the date the motion would be filed, informed Plaintiffs that any response must be received by the court within seventeen (17) days of the filing date, and advised Plaintiffs that the response must be filed by counsel.

11. In addition, the undersigned provided Plaintiffs with a list of recommendations for qualified replacement counsel that have the capabilities to handle this case.

12. This case is in the discovery phase and trial is not scheduled to be called for trial until January 10, 2024 under the current scheduling order. [DE# 35] Additionally, the undersigned has conferred with counsel for Defendants who has agreed that any revisions to the case schedule should be addressed with replacement counsel, with the Court's consent, if this motion is allowed. Thus, Plaintiffs will not be prejudiced by the undersigned's withdrawal at this point.

13. The undersigned has further conferred with counsel for the Defendants, who has consented to Kilpatrick Townsend's withdrawal and to a thirty (30) day stay of this action to enable Plaintiffs to retain replacement counsel.

WHEREFORE, the undersigned respectfully requests that Kilpatrick Townsend & Stockton, LLP, Alexander Bullock, Dustin Greene, Mark Boynton, and Chelsea Simon be allowed to withdraw as counsel for Plaintiffs, and that all deadlines in this case be stayed for thirty (30) days to allow Plaintiffs to retain replacement counsel.

This the 24th day of July 2023.

/s/ Alexander M. Bullock
Alexander M. Bullock (D.S.C. Bar #1567)
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/s/ Dustin T. Greene
Dustin T. Greene (*pro hac vice*)
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/s/ Mark D. Boynton
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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing via U.S. Mail, and served this Motion to Withdraw as Counsel, via the CM/ECF/NextGen filing system, on the following:

Mr. Bryant S. Caldwell (Federal Bar No. 13125)

bryant.caldwell@wbd-us.com

Mr. Kevin A. Hall (Federal Bar No. 5375)

kevin.hall@wbd-us.com

Mr. M. Todd Carroll (Federal Bar No. 9742)

todd.carroll@wbd-us.com

1221 Main Street, Suite 1600, Columbia, SC 29201

Attorneys for Defendants

In addition, a true and correct copy of the forgoing Motion to Withdraw as Counsel was also sent by Federal Express and by electronic mail, to each of the following:

Boggs Materials, Inc.
c/o Chuck Steele, President
1613 West Roosevelt Blvd
Monroe, NC 28110
chuck.steele@boggsmaterials.com

Boggs Contracting, Inc.
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1613 W Roosevelt Blvd
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Lynches River Contracting, Inc.
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thad.preslar@lynchesrivercontracting.com

This the 24th day of July 2023.

s/ Alexander M. Bullock
Alexander M. Bullock (D.S.C. Bar #1567)